

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHAEL A. COX, *EX REL*  
PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 06-314-CZ  
Hon. Paula J. Manderfield

v

MIKO ENTERPRISES, INC., d/b/a METRON  
INTEGRATED HEALTH SYSTEMS,  
ALLEGAN NURSING HOME, L.L.C., d/b/a  
METRON OF ALLEGAN, GREENRIDGE NURSING  
CENTER, INC., d/b/a METRON OF BIG RAPIDS,  
and KALAMAZOO CARE CENTER, INC.,  
d/b/a METRON OF KALAMAZOO

Defendants.

---

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Jessica L. Frazier (P68231)  
Assistant Attorney Generals  
Attorneys for Plaintiff  
Health Care Fraud Division  
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Stephen Kretschman (P25450)  
Devin S. Schindler (P41371)  
Attorneys for Defendants  
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111 Lyon Street, NW  
Grand Rapids, MI 49503  
(616) 752-2000

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**SETTLEMENT AGREEMENT**

I. Parties

This Settlement Agreement is entered into between Plaintiff is Michael A. Cox, Attorney General of the State of Michigan, *ex rel* the People of the State of Michigan and Defendants Miko Enterprises, Inc., d/b/a Metron Integrated Health Systems; Allegan Nursing Home, L.L.C.,

d/b/a Metron of Allegan; Greenridge Nursing Center, Inc., d/b/a Metron of Big Rapids; and Kalamazoo Care Center, Inc., d/b/a Metron of Kalamazoo.

## II. Preamble

2.1. Defendants are Michigan corporations engaged in the business of operating or providing services to nine nursing homes located in Michigan. Metron Integrated Health Systems does not own or operate a nursing home, but provides management services to nine affiliated nursing homes known as Metron of Allegan, Metron of Big Rapids, and Metron of Kalamazoo, which are Defendants in this action, and Metron of Belding, Metron of Bloomingdale, Metron of Cedar Springs, Metron of Forest Hills, Metron of Greenville, and Metron of Lamont (collectively designated as "Metron" or "Metron facilities").

2.2. The Complaint in this matter was filed on or about March 8, 2006. In the Complaint, Plaintiff alleges that Defendants are liable for violations of the Michigan Medicaid False Claims Act (Count I), violation of the Public Health Code (Count III), and for Breach of Contract (Count II) based on the following conduct:

### A. Metron of Allegan

On July 29 – August 1, 2003, an annual survey was conducted at Metron of Allegan. The facility received 10 deficiency citations, ranging from level 2D (no actual harm with potential for more than minimal harm that is not immediate jeopardy) to level 3G (actual harm that is not immediate jeopardy). On June 28 – July 1, 2004, an annual survey was conducted at Metron of Allegan. The facility was cited for 6 deficiency citations, ranging from level 1B (no actual harm with potential for minimal harm) to level 2E (no actual harm with potential for more than minimal harm that is not immediate jeopardy). On June 26 – 29, 2005, an annual survey was conducted at Metron of Allegan, resulting in 21 deficiency citations, ranging from level 2D (isolated incidents of no actual harm, but with potential for more than minimal harm that is not immediate jeopardy), to level 3G (isolated incidents of actual harm that is not immediate jeopardy).

B. Metron of Big Rapids

On December 1 – 4, 2003, an annual survey was conducted at Metron of Big Rapids. The facility received 9 deficiency citations, ranging from level 1B (no actual harm with potential for minimal harm) to level 2E (no actual harm with potential for more than minimal harm that is not immediate jeopardy). On November 16 – 19, 2004, an annual survey was conducted at Metron of Big Rapids. The facility received 27 deficiency citations, ranging from level 2D (isolated incidents of no actual harm, but with potential for more than minimal harm that is not immediate jeopardy); to level 3G (isolated incidents of actual harm that is not immediate jeopardy). On November 15 – 18, 2005, an annual survey was conducted at Metron of Big Rapids resulting in 12 deficiency citations, ranging from level 2D (isolated incidents of no actual harm, but with potential for more than minimal harm that is not immediate jeopardy), to level 2E (a pattern of no actual harm, but with potential for more than minimal harm that is not immediate jeopardy). On January 16, 2005, acts and omissions at Metron of Big Rapids lead to the death of an oxygen-dependant resident.

C. Metron of Kalamazoo

On November 4 – 7, 2003, an annual survey was conducted at Metron of Kalamazoo. The facility received 22 deficiency citations, ranging from level 1B (no actual harm with potential for minimal harm) to level 3G (actual harm that is not immediate jeopardy). On August 10 – 13, 2004, an annual survey was conducted at Metron of Kalamazoo. The facility received 8 deficiency citations, ranging from level 1B (no actual harm with potential for minimal harm) to level E (no actual harm with potential for more than minimal harm that is not immediate jeopardy). On September 12 – 16, 2005, an annual survey was conducted at Metron of Kalamazoo. The facility was cited for 15 deficiency citations, ranging from level 1B (no actual harm with potential for minimal harm) to level 3G (actual harm that is not immediate jeopardy).

Defendant's claims for reimbursement submitted to Medicaid for care of the oxygen-dependant resident who died at Metron of Big Rapids on January 16, 2005, and the Medicaid-eligible residents who were specifically identified as subjects of Department of Community Health surveys described above, or based on costs of care incurred as to these residents that were included in Defendants' cost reports, were false claims within the meaning of the Michigan Medicaid False Claims Act and constituted a breach of the Defendants' Medicaid provider enrollment agreements. Defendants also failed to provide adequate care to these residents and

harmfully neglected the residents in violation the Public Health Code, MCL 333.21771(1). The Plaintiff contends that the Medicaid program suffered damages as a result of the Covered Conduct.

Collectively, the conduct and damages identified in this paragraph will be referred to as the "Covered Conduct".

2.3. Defendants deny the allegations in the Complaint.

### III. Terms and Conditions

Now, therefore, before the taking of any testimony and without discovery or trial of any issue of fact or law, and in reliance on the representations contained herein and in the Corporate Integrity Agreement that is attached hereto, the Parties agree as follows.

#### A. Jurisdiction and Venue

3.1. This Court has jurisdiction over the subject matter of this action pursuant to the Medicaid False Claims Act, MCL 400.601 *et seq*, and the Revised Judicature Act (RJA), MCL 600.601 and 600.605. The Court has personal jurisdiction over Defendants pursuant to Sections 705, 711 and 715 of the RJA, and MCL 600.705, 600.711, and 600.715.

3.2. Venue in this Court is proper in the 30<sup>th</sup> Judicial Circuit Court in Ingham County, pursuant to MCL 400.611 and MCL 14.102.

#### B. Objectives of this Settlement Agreement

3.3. The Parties agree that settlement of this action is in the public interest and that entry of this Settlement Agreement, without further litigation, is the most appropriate means of resolving the issues raised herein.

3.4. The objectives of this Settlement Agreement are to settle the claims alleged in the Complaint in a manner and under terms satisfactory to the parties.

C. Corporate Integrity Agreement

3.5. The parties have entered into a Corporate Integrity Agreement which is designed to improve the clinical performance of the Metron facilities and demonstrate its commitment to providing the care and services necessary to attain and maintain the highest practicable physical, mental, and psychosocial well-being of the residents at all nine of Metron's facilities

3.6. The Corporate Integrity Agreement is the basis upon which the Settlement Agreement is entered and it is hereby incorporated by reference in this Settlement Agreement as if fully set forth.

D. Settlement

3.7. Metron agrees to pay the sum of \$78,015 to the State of Michigan within 10 days of the effective date of this Agreement. \$10,000 of that sum shall be in satisfaction of disputed Medicaid reimbursement claims, and the balance shall be in satisfaction of disputed claims under MCL 400.612.

3.8. In consideration of this Agreement and the Corporate Integrity Agreement and subject to the exceptions from release set forth in Paragraphs 3.8 and 3.13 below, the Plaintiff, on behalf of the State, releases Defendants, their predecessors, subsidiaries, joint venture owners, and their corporate parents and affiliates, successors and assigns, and their current and former directors, officers, managers of Allegan Nursing Home, L.L.C. and employees from any civil claims and, except for any action or claim that is pending when this Agreement is executed, administrative claims for Medicaid damages or penalties that they have or may have relating to the Covered Conduct. Successful completion of the Corporate Integrity Agreement will fully discharge Defendants from any obligation to pay Medicaid-related restitution, damages, and/or any fine or penalty to the state for the Covered Conduct.

3.9. Notwithstanding any term of this Agreement, the state of Michigan specifically does not herein release Defendants, their predecessors, subsidiaries, joint venture owners, and their corporate parents and affiliates, successors and assigns, and their current and former directors, officers, managers of Allegan Nursing Home, L.L.C. and employees from any and all of the following: (a) any potential criminal, civil or administrative claims arising under state of Michigan revenue codes; (b) any criminal liability, except as explicitly stated in paragraph 2.17 of the Corporate Integrity Agreement; (c) any civil or administrative liability that Defendants have or may have under any state statute, regulation, or rule not covered by the release; (d) except as explicitly stated in this Settlement Agreement or the Corporate Integrity Agreement, any administrative liability, including mandatory exclusion from the state of Michigan's Medicaid program; (e) any liability to the state of Michigan (or its agencies) for any conduct other than the Covered Conduct; (f) any claims based upon such obligations as are created by this Settlement Agreement or the Corporate Integrity Agreement.

3.10. Defendants fully and finally release the state of Michigan, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Defendants have asserted, could have asserted, or may assert in the future against the state of Michigan, its agencies, employees, servants, and agents, related to or arising from the investigation and prosecution of the Covered Conduct up to the effective date of this Settlement Agreement.

3.11. The Parties acknowledge and agree that this Settlement Agreement is a compromise of disputed claims and that it shall not be construed to be an admission or concession of any fact, liability, or fault.

E. Retention of Jurisdiction

3.12. While the Corporate Integrity Agreement remains in effect, this Court shall retain jurisdiction over this action to hear any claims for specific performance of the Corporate Integrity Agreement and, to the extent allowed by the Corporate Integrity Agreement or agreed to by the parties, take any action necessary or appropriate to construe or implement the Corporate Integrity Agreement.

3.13. If the Corporate Integrity Agreement terminates or expires by Metron's successful completion of the terms and conditions thereof, or by sale of all of Metron's facilities in the manner specified in the Corporate Integrity Agreement, the parties shall submit a stipulated order dismissing the case with prejudice and without costs or fees.


3.14. If, however, at the time Corporate Integrity Agreement is to terminate or expire, Metron has (a) failed to remedy an ongoing material breach for which the reasonable time to cure specified by the Monitor has passed, or (b) failed to pay liquidated damages as provided under the Corporate Integrity Agreement, the Parties agree that at the request of the Plaintiff an order shall enter setting aside this Settlement Agreement, and the Plaintiff may prosecute the claims set forth in the complaint.

F. Signatories and Effective Date

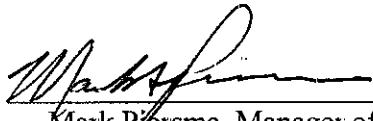
3.15. The signatories to this Settlement Agreement certify that they are authorized to execute this Settlement Agreement and to legally bind the parties they represent.

3.16. This Settlement Agreement shall be effective upon the date that it is entered by the Court.

FOR PLAINTIFFS Michael A. Cox, *ex rel*  
People of the State of Michigan,

By:  Dated: May 19, 2006  
Mark Matus (P36659)  
Jessica Frazier (P68231)  
Assistant Attorneys General  
Health Care Fraud Division

FOR DEFENDANTS Miko Enterprises, Inc., *et al*

By:  Dated: May 17, 2006  
Mark Piersma, Manager of Allegan  
Nursing Home, L.L.C. and  
President of the other Defendant entities  
3075 Orchard Vista Dr., SE, Ste. 100  
Grand Rapids, MI 49546



STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHAEL A. COX, *EX REL*  
PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 06-314-CZ  
Hon. Paula J. Manderfield

v

MIKO ENTERPRISES, INC., d/b/a METRON  
INTEGRATED HEALTH SYSTEMS,  
ALLEGAN NURSING HOME, L.L.C., d/b/a  
METRON OF ALLEGAN, GREENRIDGE NURSING  
CENTER, INC., d/b/a METRON OF BIG RAPIDS,  
and KALAMAZOO CARE CENTER, INC.,  
d/b/a METRON OF KALAMAZOO

Defendants.

Mark W. Matus (P36659)	Joel M. Shere (P20350)	Stephen Kretschman (P25450)
Jessica L. Frazier (P68231)	Attorney for Defendant	Devin S. Schindler (P41371)
Assistant Attorney Generals	Cooper & Walinski, LPA	Attorneys for Defendants
Attorneys for Plaintiff	206 S. Fifth Avenue	Warner Norcross & Judd, LLP
Health Care Fraud Division	Ste. 400	900 Fifth Third Center
P.O. Box 30218	Ann Arbor, MI 48104	111 Lyon Street, NW
Lansing, MI 48909		Grand Rapids, MI 49503
(517) 241-6500		(616) 752-2000

STIPULATED ORDER ENTERING  
SETTLEMENT AGREEMENT AND RETAINING JURISDICTION

At a session of said Court held  
in the County of Ingham, State  
of Michigan, on the 19<sup>th</sup>  
day of May, 2006.

Present: Honorable Paula J. Manderfield,  
Circuit Judge

The Parties have stipulated to this order entering the Settlement Agreement dated May 19, 2006, which incorporates by reference the Corporate Integrity Agreement and calls for the Court to retain jurisdiction while the Corporate Integrity Agreement remains in effect to hear

any claims for specific performance of the Corporate Integrity Agreement and, to the extent allowed by the Corporate Integrity Agreement or agreed to by the parties, take any action necessary or appropriate to construe or implement the Corporate Integrity Agreement.

Therefore,

IT IS HEREBY ORDERED that the Settlement Agreement dated May 19, 2006 is entered and the Court shall retain jurisdiction over this action to hear any claims for specific performance of the Corporate Integrity Agreement and, to the extent allowed by the Corporate Integrity Agreement or agreed to by the parties, take any action necessary or appropriate to construe or implement the Corporate Integrity Agreement.

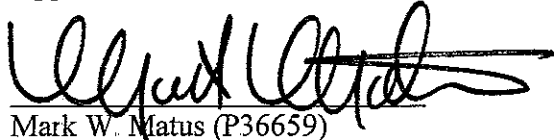
IT IS FURTHER ORDERED that if the Corporate Integrity Agreement terminates or expires by Metron's successful completion of the terms and conditions thereof, or by sale of all of Metron's facilities in the manner specified in the Corporate Integrity Agreement, the parties shall submit a stipulated order dismissing the case with prejudice and without costs or fees. If, however, at the time Corporate Integrity Agreement is to terminate or expire, Metron has (a) failed to remedy an ongoing material breach for which the reasonable time to cure specified by the Monitor has passed, or (b) failed to pay liquidated damages as provided under the Corporate Integrity Agreement, the Parties agree that at the request of the Plaintiff an order shall enter setting aside this Settlement Agreement, and the Plaintiff may prosecute the claims set forth in the complaint.

JUDGE PAULA J. M. MANDERFIELD

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Hon. Paula J. Manderfield  
CIRCUIT COURT JUDGE

Approved as to form and content:



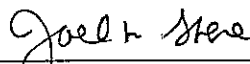
Mark W. Matus (P36659)

Jessica L. Frazier (P68231)

Attorneys for Plaintiff

Date: 5/19/2006

Approved as to form:

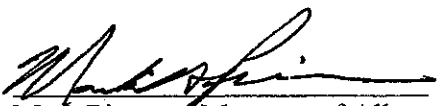


Joel M. Shere (P20350)

Attorney for the Defendants

Date: 5/18/06

Approved as to form and content:



Mark Piersma, Manager of Allegan  
Nursing Home, L.L.C. and  
President of the other Defendant entities  
3075 Orchard Vista Dr., SE, Ste. 100  
Grand Rapids, MI 49546

Date: May 17, 2006

CORPORATE INTEGRITY AGREEMENT

BETWEEN:

METRON INTEGRATED HEALTH SYSTEMS, *et al*

-AND-

ATTORNEY GENERAL OF THE STATE OF MICHIGAN

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## AGREEMENT

This Agreement is entered into between the State of Michigan acting through Michael A. Cox, Attorney General of the State of Michigan and Miko Enterprises, Inc, d/b/a Metron Integrated Health Systems; Allegan Nursing Home, L.L.C., d/b/a Metron of Allegan; Belding Christian Nursing Home, Inc., d/b/a Metron of Belding; Bethany Care Center, L.L.C., d/b/a Metron of Bloomingdale; Cascade Care Center, Inc., d/b/a Metron of Forest Hills; Cedar Care Center, Inc., d/b/a Metron of Cedar Springs; Glenwood Christian Nursing Home, Inc., d/b/a Metron of Lamont; Greenridge Nursing Center, Inc., d/b/a Metron of Big Rapids; Greenville Care Center Inc., d/b/a Metron of Greenville; and Kalamazoo Care Center, Inc., d/b/a Metron of Kalamazoo (collectively designated as "Metron" or "Metron facilities").

### I. Preamble

1.1. As a result of: (1) the Attorney General's investigation of a complaint of neglect of a resident at the Metron of Big Rapid's nursing home on January 16, 2005, which resulted in criminal charges against individuals who are or were employed at the nursing home; and (2) negative surveys of Metron's nursing homes in Allegan, Big Rapids, and Kalamazoo documenting significant violations of applicable state and federal law, policies, procedures, rules and regulations, which lead to the Attorney General filing suit against Metron, *Michael A. Cox v Miko Enterprises, Inc., et al*, Ingham County Circuit Court Case No. 06-314-CZ, Metron enters into this Agreement to demonstrate its commitment to providing the care and services necessary to attain and maintain the highest practicable physical, mental, and psychosocial well-being of the residents at all nine of Metron's facilities.

## II. Terms and Conditions

In consideration of the mutual promises, covenants, and obligations set forth in this Agreement, the Parties agree as follows:

### A. Definitions

For purposes of this Agreement, the following definitions apply:

2.1. "Abuse" or "Neglect" shall have the meaning and interpretation set forth in Chapter 3, Part 3300 of the Michigan Department of Community Health, Bureau of Health Systems Complaint and Facility Reported Incident Manual (Rev. 10/17/2005). Part 3300 of the Manual states in part that "abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish; and "neglect" means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness .

2.2. "Attorney General" means the Attorney General of the State of Michigan, or his designee, including but not limited to, Assistant Attorneys General, Special Agents, and any individual or entity designated by the Attorney General to assist in the fulfillment of the Attorney General's rights and obligations under this Agreement

2.3. "CNA" means a Certified Nurse Aide as established by law .

2.4 "Facilities" mean Metron's nursing homes as of the effective date of this Agreement (Metron of Allegan, Belding, Big Rapids, Bloomingdale, Cedar Springs, Forest Hills, Greenville, Kalamazoo, and Lamont) and any additional nursing homes Metron acquires while this Agreement is in effect.

2.5. "Information" includes but is not limited to, interviews, documents, raw and processed data, records, reports, statements, charts, contracts, agreement memorandum,

correspondences, resident records, medical records, quality assurance and control data, and peer review committee records, regardless of how the information is recorded or stored.

2.6. "Law" or "laws" mean state and federal statutes, rules, regulations, rules, guidelines, policies, regulatory directives, and legal requirements established by case law.

2.7. "Parties" mean Michael A. Cox, Attorney General of the State of Michigan, Metron and Metron facilities.

2.8. "Physicians" means medical directors and any physician responsible for care of a resident.

2.9. "Reportable event" means anything that must be reported by law or anything that would be considered a probable violation of applicable criminal laws or a probable violation of 42 CFR 483.13, 42 CFR 483.15 or 42 CFR 483.25, and includes a material breach of this Agreement regardless of whether there is a violation of law or regulation. A reportable event may be the result of an isolated event or a series of related occurrences.

2.10. "Resident" includes the resident, guardian, or other person responsible for making financial or medical decisions on behalf of the resident.

2.11. "Staff" includes any employee, subcontractor, temporary employee, or other person under Metron's supervision or control who provides, directs, or supervises care to residents. The term "staff" does not include physicians.

B. Agreement by the Parties

2.12. The Boards of Directors of Metron and its facilities have approved this Agreement and authorized Mark Piersma, President of Miko Enterprises Inc., d/b/a Metron Integrated Health Systems and all of the facilities, to bind Metron to the terms of this Agreement by his signature. A copy of the Boards' resolutions authorizing Mark Piersma's execution of the Agreement is attached.



2.13. This Agreement is effective for a period of two years from the effective date of the Contract for Monitor Services described in paragraph 3.1, and is subject to extension or termination as provided below.

2.14. This Agreement is binding on and enforceable against the successors and assigns of the Parties, but shall not be binding on a purchaser of any Metron facility in accordance with paragraph 6.1.

2.15. Metron's governing body is its Board of Directors and the Board is responsible for implementing this Agreement and for Metron's compliance with the terms and conditions of this Agreement. Board members shall not be individually liable for liquidated damages under this Agreement unless their conduct creates personal liability under state law.

2.16. Metron understands that this Agreement is conditioned on it cooperating fully with the Attorney General and any other state or federal agency in any monitoring, audits, inspections, interviews, document reviews, or investigations resulting from this Agreement.

2.17. The promises, agreements, preamble and actions undertaken by Metron under this Agreement, do not:

- a. Constitute an admission of liability with respect to the care and treatment of any resident at Metron;
- b. Relieve Metron from their obligation to comply with the Medicaid Program or state and federal law; or
- c. Represent or imply that Metron has or has not complied with the Medicaid Program or any or all state and federal laws.

2.18. If Metron complies with the requirements of this Agreement, the Attorney General will not file criminal charges against Metron for the complaint of neglect described in paragraph 1.1 of the Preamble. However, the Attorney General reserves the right to file criminal charges against any culpable individual in connection with any incident arising before, during or

after the investigation period. Criminal charges may be filed against Metron for the incident described in paragraph 1.1 only if the Monitor (a) finds that there is a ongoing material breach of this Agreement, (b) has specified a reasonable time during which Metron has an opportunity to cure the breach, and (c) Metron fails to cure the breach within the time specified. Whether to file criminal charges after such finding by the Monitor is within the sole discretion of the Attorney General.

2.19. Metron agrees that the statute of limitations applicable to criminal charges against it related to the complaint of neglect described in paragraph 1.1 will be tolled during the term of this Agreement and during any litigation or other proceedings to monitor or enforce this Agreement, and for a period of 90 days beyond the expiration or termination of this Agreement.

2.20. Other than the representations contained in this Agreement, the Attorney General has not made representations regarding any criminal, civil or administrative disposition of the issues described in paragraph 1.1 of the Preamble. This Agreement does not address or preclude the Attorney General or any other state or federal agency from taking any action allowed or required by law or to investigate any violation of state or federal law.

2.21. Any action taken by the Department of Community Health, the Department of Health and Human Services, the Department of Justice, or any other state or federal agency or department will not affect the obligations of Metron under this Agreement. Should a regulatory agency take action against Metron that is in direct conflict with a requirement of this Agreement, Metron shall comply with the directive of the regulatory agency unless or until the Attorney General resolves the conflict with the agency.

2.22. All Parties will maintain all documents, reports, files, charts, and other evidence relevant to the January 16, 2005 incident noted in paragraph 1.1 until at least ninety (90) days

after successful completion of this Agreement and the conclusion of all litigation or other proceedings to monitor or enforce this Agreement.

2.23. Metron shall pay all reasonable costs and expenses associated with compliance and enforcement of this Agreement, including but not limited to:

- a. The costs and expenses of the Monitor and all monitoring, testing, inspections, auditing, investigation, liquidated damages, or other enforcement requirements of this Agreement;
- b. All reasonable costs associated with the retention of individuals appointed by the Monitor to assist in the enforcement of this Agreement or assist in areas in which the Monitor does not have expertise; the Monitor shall consult with Metron and the Attorney General on the need to retain individuals to assist the Monitor in enforcing this Agreement.
- c. The cost of any materials needed to fulfill Metron's training requirements;
- d. Enforcement costs, including but not limited to, the costs and expenses of litigation or otherwise resolving disputes under this Agreement, including reasonable attorney fees, if the Attorney General's Office is the prevailing party in such enforcement action; and
- e. These costs shall not be passed through or onto Medicaid.

2.24. Metron will fully comply with all of the requirements of state and federal law, including, but not limited to, the Medicaid False Claims Act, MCL 400.601 *et seq*, 42 CFR 483, and the Michigan Public Health Code, MCL 333.1101 *et seq*.

2.25. In addition to any other rights under this Agreement or provided by law, the Attorney General may, in his sole discretion, exercise any right given by this Agreement to the Monitor to obtain, use, and receive any information and documents that the Monitor may receive pursuant to this Agreement.

2.26. When requested by the Attorney General or the Monitor, the Chief Executive Officer and the Chairman of the Board must certify under the penalty of perjury that all

information and representations provided under this Agreement are true, accurate, and complete to the best of their knowledge.

2.27. Metron agrees that, except for the attorney–client privilege and attorney work product doctrine, it shall not assert any privilege defense or refuse to produce any audits, audit work papers, supporting exhibits, analytical documents, reports, raw data, internal memoranda, quality assurance, risk management information, peer review, or other information that the Attorney General or the Monitor may require under the terms of this Agreement. The information may be used for any purpose within the jurisdiction of the Attorney General, the Department of Community Health, and the Medical Services Administration. The Attorney General may use and disclose the information to any state or federal agency or department consistent with their statutory authority.

2.28. Metron recognizes that any documents, data, report, and other information disclosed to the Attorney General or the Monitor will be subject to verification, audit, and investigation. Suspected neglect or abuse disclosed or revealed during the verification process may, at the Attorney General's sole discretion, be pursued by the initiation of an independent audit, investigation, prosecution, administrative proceeding, civil suit, or referral to the appropriate state or federal agency or department for further action.

C. Nursing Home Operations and Training

2.29. Metron will review existing policies and procedures for the Metron facilities, and amend or create new policies and procedures, if necessary, to:

- a. Check the criminal history reports of all staff and potential staff, including temporary and pool staff, in compliance with Michigan's Criminal Background Check Statute, MCL 333.20173a *et. seq.*
- b. Ensure that residents who are at risk for dehydration, malnutrition, and pressure sores receive timely and appropriate assessments, diagnosis,

treatment, care, monitoring, and transfer. Metron will provide the Monitor with written certification of their compliance with this section.

- c. Establish a basis for granting privileges in the facility, including formal credentialing, privileging, peer review, and quality assurance for Physicians providing services in the facility. Competency testing will not be required of Physicians.
- d. Provide for the discipline and removal of management, director of nursing, medical directors, staff, physicians, and other individuals who have been granted privileges in the Facilities, if they abuse or neglect a resident or fail to maintain and demonstrate skills necessary to provide resident care consistent with professionally accepted standards and state and federal law.
- e. Require immediate reporting of disciplinary actions and dismissals to the appropriate licensing, certification, and monitoring authorities as required by law.
- f. Establish competency standards for temporary or pool staff and procedures for assuring that temporary or pool staff possess the current skill levels required to perform assigned tasks. The Facilities may rely upon state licensing or certification as proof of basic credentialing. Metron will not permit temporary or pool staff to provide care to residents until: (1) the staff have been provided with orientation to the facility; and (2) the individual has demonstrated through licensing, certification, and as necessary, appropriate supervision, the clinical competency to perform all assignments.
- g. Require and provide appropriate orientation, training, and continuing education for all medical directors and staff, including temporary or pool staff, who provide care to residents. For Physicians other than medical directors, Metron will provide: 1) facility orientation, 2) copies of training materials provided to medical directors, and 3) access to organized compilations of all resident care related policies and procedures which shall be maintained at each facility in a location made know to physicians and staff.
- h. Establish any policy or procedure necessary to fully comply with this Agreement and state and federal law.
- i. Provide for the enforcement of policies and procedures including discipline for the failure to follow policies or procedures.
- j. Provide for the prevention of abuse and neglect of residents, including:

- (1) Education of all staff providing care to residents and medical directors on what constitutes abuse and neglect and the signs and symptoms of abuse and neglect. The educational and training materials shall be provided to Physicians other than medical directors. The education shall at a minimum include:
  - (a) The right and duty, as required by law or this Agreement, to report abuse or neglect to:
    - 1) Administration;
    - 2) Monitor
    - 3) Attorney General;
    - 4) Resident's family or responsible individual;
    - 5) Resident's physician;
    - 6) Michigan Department of Community Health and Adult Protective Services;
    - 7) Other appropriate corporate, state and federal officials;
  - (b) The penalties for failure to report abuse or neglect:
    - 1) Assessment of fines, independent audit, criminal charges, personal civil liability, administrative proceeding referral to the appropriate state or federal agency or department for further action, and loss of professional certifications and licenses of the individuals who were aware of the abuse or neglect and did not report or prevent it;
    - 2) Termination of any supervisor, administrator, physician, licensed professional, or staff person who fails to immediately report the abuse or neglect and take appropriate measures to:
      - a) Treat resident;
      - b) Remedy the abuse or neglect and protect the resident;
      - c) Discipline the responsible individuals;
      - d) Report the abuse or neglect.
  - (c) That there will be no retaliation for reporting abuse or neglect.
- (2) Post and maintain in a conspicuous place the names, procedures, address, and telephone numbers of the Michigan Department of Community Health, police, Adult Protective Services, and the Attorney General's Hot Line to facilitate reporting of abuse and neglect.

- (3) Advise in writing all residents, family, or responsible persons of each resident of the definitions of abuse and neglect and where to report abuse and neglect.

2.30. Metron, its agents, employees, contractors, and subcontractors agree not to take any retaliatory action against any individual who provides information as allowed by state or federal law or as required by this Agreement.

2.31. Metron will at all times have a sufficient number of qualified registered nurses, licensed practical nurses, licensed therapists, licensed social workers, CNAs, and other professional and nonprofessional staff on duty and on the premises to fully meet the needs and medical requirements of the residents, including but not limited to:

- a. Appropriate and timely medical assessment, treatment, and management;
- b. Full compliance with residents' plan of care and responses to any changes of condition, which may require reassessment, alteration of care and treatment, emergency treatment, and transfer;
- c. Maintain residents at the proper hydration and nutritional level for their medical condition;
- d. Provide residents with assistance in eating and drinking, such that each resident will be given full opportunity and receive the appropriate amount of fluids and nutrition;
- e. Monitor and supervise the staff and Physicians consistent with professionally accepted standards of care and state and federal law.

Metron will ensure that each resident has at all times a qualified Physician responsible for meeting the residents' needs and medical requirements, including those described above.

2.32. The nursing and direct care staffing level for each shift at Metron of Allegan, Big Rapids and Kalamazoo must not be less than .25 hours per patient, per day, per shift above the minimum required by law.

- a. Metron will provide nursing and related services on a 24-hour basis to attain and maintain the highest practicable physical, mental, and psychosocial well-being of each resident.
- b. Metron will ensure adequate continuity of resident care so that the Facilities minimize the degree of risk to residents by utilization of temporary staff.
- c. In the event this provision is not satisfied for any shift, the facility must report the noncompliance to the Monitor.
- d. The report must explain the reasons for the staffing shortage and provide a plan for correction.
- e. If the minimum hours per patient, per day, per shift as required by law is increased, then the Monitor will determine whether the Facilities need to continue a staffing level that is .25 hours per patient, per day, per shift, or some part thereof, above the minimum required by the amended law. For purposes of this subsection, the minimum staffing level for each shift is calculated by the same formulas and methods utilized by the Department of Community Health.
- d. Failure to maintain a monthly average staffing level that is no less than .25 hours per patient, per day, per shift above the minimum required by law shall be a material breach of this Agreement.

2.33. Metron must provide a training program to ensure that medical directors and all staff providing care to residents, including new hires, pool and temporary staff, are adequately trained to provide care or contribute to the care of residents and implement this Agreement, and are provided with in-service training on a regular basis as approved by the Monitor. Training should include, but is not limited to:

- a. Providing a coordinated interdisciplinary approach to providing resident care;
- b. Dehydration, prevention, assessment, signs, symptoms, and treatment;
- c. Hydration management;
- d. Nutrition including malnutrition, prevention, assessment, signs, symptoms, and treatment;

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- e. Weight loss management;
- f. Pharmacy review including drug contradictions based on residents' medical and physical condition and drug interactions for staff passing medications;
- g. Documentation, including the need for timely, accurate, complete and legible medical records;
- h. Communications with residents;
- i. Requirements for informed decisions by residents regarding care, treatment, food, fluids, and who can and cannot make informed decisions to refuse food and fluids, including when a resident is incapable of making a decision;
- j. Communication with Physicians, including a physician's need for timely, accurate, and complete information;
- k. Importance of complying with a resident's plan of care, including updates and revisions, and the resident's advance directives;
- l. Training in passing medications and the importance of documenting the administration of medications;
- m. Wound Care treatment, prevention, assessment, at risk indicators, symptoms, and signs.
- o. Requirements for caring for oxygen dependent patients, including documenting the patient's oxygen saturation, documenting when a tank was changed, who changed it, and the flow rate of both the tank that is changed and the new tank, and calculating tank depletion rates.

Metron, through its medical directors, will monitor Physician care of residents to ensure Physician compliance with this paragraph, and when training is conducted, Metron will promptly supply Physicians with copies of the training materials.

2.34 Metron will document that each person attending training has understood and can apply the materials and information taught in the training sessions. Any staff member who does not maintain at least an 80% comprehension level is not permitted to perform the task or have the

responsibility for the task until he or she can demonstrate comprehension of the information and competency for the task.

2.35. The Monitor shall have the right to test and assess the staff's comprehension of information taught and ability to competently apply it in clinical settings. The Monitor may, at his or her discretion, use written or oral tests, interviews, demonstrations and observation to test and assess the staff's comprehension and competency to perform the task. The Monitor will verify that the facility has determined and documented each person's competency and comprehension by written or oral tests, interviews, demonstrations or observation.

2.36. Metron may combine in-services and training on two or more of the subjects required by this Agreement, provided that combining the training does not impair the quality of training.

2.37. Metron will provide the Monitor with advance notice of all training sessions, including identification of the instructors, the instructor's qualifications, course outline, and course materials.

2.38. Training instructors, material, and content must be approved by the Monitor.

2.39. The Monitor shall be entitled to attend, without notice, any training session and receive, at Metron's expense, a complete copy of all materials used in the training.

2.40. All staff training, except as specifically provided elsewhere in this Agreement, shall be completed within one hundred twenty (120) days from the date of final signature of this Agreement. Metron will complete training that is deemed critical by the Monitor within ninety (90) days of the Monitor's designation.

2.41. Metron will ensure that licensed clinical staff regularly attends continuing medical education programs that include, but are not limited to, geriatrics, wound care treatment,

nutrition, dehydration and incontinence for long-term care residents that is consistent with the standards of practice. Metron, through its medical directors, will monitor the performance of Physicians and make recommendations for continuing medical education and training as appropriate to conform to this paragraph.

2.42. Metron shall provide the necessary physician care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. Metron must take all reasonable steps, including intervention by their medical director and revocation of physician privileges at Metron, to ensure that residents receive the care required by this Agreement, including that:

- a. Physicians promptly obtain and review all laboratory and test results, document the responses in the residents' charts and take appropriate actions to address the results;
- b. Physicians examine and treat the residents who experience a change in their medical condition as required by law and professionally accepted standards of care;
- c. Physicians timely and appropriately document the resident's medical record. A random audit of the medical records will be conducted by Metron every thirty days to ensure compliance with state and federal law and internal policy;
- d. Physicians promptly address residents' significant or undesirable changes in condition, including but not limited to, weight loss, nutritional problems, and dehydration and personally provide continual follow-up until the situation is adequately addressed;
- e. In the event of a medical emergency involving a resident, Metron will immediately initiate appropriate emergency interventions, and if appropriate, transport the resident to the closest appropriate medical facility;
- f. Physicians conduct comprehensive health care evaluations of all residents;

- g. Physicians determine what specialized medical services are required for the residents and ensure that such services are timely provided;
- h. An integrated medical plan of care exists and is implemented for each resident;
- i. Each resident's medical status and progress in response to the resident's medical plan of care is regularly and adequately reviewed and all changes appropriately documented;
- j. Each resident's drug regimen is free from unnecessary drugs;
- k. Adequate and appropriate interdisciplinary communication among relevant professionals, especially between and among Physicians and nurses;
- l. Physicians communicate with the pharmacist pertaining to therapeutic responses by residents to prescribed medications as appropriate and consistent with accepted professional standards of practice.

2.43. Metron must ensure that residents receive adequate and appropriate nursing care and that nurses perform their responsibilities in keeping with accepted professional standards of practice and state and federal law, by adequately identifying health care problems, notifying Physicians of those problems, monitoring and intervening to ameliorate such problems, and keeping appropriate records of residents' health care status, including:

- a. Review and develop nursing protocols;
- b. Review and develop and implement adequate and appropriate comprehensive interdisciplinary care plans to address each resident's health care needs;
- c. Conduct timely, adequate, and comprehensive nursing assessments upon significant change in a resident's condition;
- d. Routinely perform ongoing monitoring of urgent and emergent medical conditions, including the basic nursing process procedures, such as vital signs, measuring input and outputs, weights and monitoring compliance with each resident's plan of care, regular assessment of each resident's medical condition and appropriateness of each resident's plan of care.
- e. Implement a system for recording and reporting relevant clinical information regarding each resident's status;

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- f. Regularly monitor the progress of residents to ensure that staff members are continually taking whatever nursing steps are necessary for the health care of each resident;
- g. Communicate essential clinical information to Physicians;
- h. Follow Physicians' orders or document the rationale for deviations thereof;
- i. Administer medications in a timely manner;
- j. Ensure that each resident is provided with adequate skin care including nutrition, turning and positioning;
- k. Follow standard infection control procedures, maintain aseptic technique and conditions at treatment sites and maintain an infection control program designed to provide a sanitary and comfortable environment and to prevent the development and transmission of disease and infection;
- l. Ensure that, in accordance with the informed decision of the resident or resident's legal guardian and family, and in accordance with applicable standards of practice as appropriate and consistent with Michigan law, each resident's nutritional and fluid intake is adequate by:
  - (1) Ensuring that weights are routinely and accurately recorded;
  - (2) Ensuring that residents receive appropriate therapeutic diets of sufficient quantity;
  - (3) Ensuring proper hydration;
  - (4) Ensuring that residents are provided with proper assistance and supervision and with appropriate assistive eating and adaptive devices;
  - (5) Ensuring that residents who are at risk for dehydration are promptly seen by dietary staff; and
  - (6) Providing follow-up until the situation is adequately addressed.

2.44. Metron must ensure that it has all equipment necessary to fully implement and comply with this Agreement. The equipment shall be on site, in good and safe repair, and in use as soon as possible but no later than within one month of the execution of this Agreement. The facilities shall keep maintenance and repair records for all equipment. The equipment should include:

- a. Any equipment and supplies needed to:
  - (1) comply with physician orders;
  - (2) provide residents with care, treatment, assessment, management, which meets professionally recognized standards of care and state and federal law.
- b. All staff training necessary to use the equipment must be done as soon as the equipment is acquired.

2.45. Metron must maintain a quality assessment and assurance committee that develops and implements appropriate plans of action to correct quality of care deficiencies.

2.46. Metron shall, if necessary, employ a qualified professional consulting service for quality assurance or a third party to assist the administration of Metron.

2.47. Metron will provide to the Monitor written quarterly quality assurance audit reports in such form and content as the Monitor shall require. All reports, documents, and work papers from the quality assurance monitoring must be provided with the audit report.

### III. Appointment and Powers of the Monitor

3.1. The Monitor (and any successor Monitor) shall be appointed by mutual agreement of the Parties within 60 days of the final signature to this Agreement. The period for appointment of the Monitor may be extended by mutual agreement of the Parties, but if the Parties fail to appoint a Monitor within a timeframe that has been agreed upon, this Agreement shall be null and void. The Monitor shall not be a current or former employee of either Party, and the Monitor's compensation shall be agreed upon in writing before this Agreement takes effect. The Parties will enter into a contract for the services the Monitor. The Monitor's duties under this Agreement are non-delegable. As set forth in paragraph 2.22, the contract shall require that all costs and expenses of the Monitor be paid by Metron. The Attorney General shall be a party to the contract and shall have the exclusive right, after consultation with Metron, to

terminate the Monitor for cause. If necessary, the Parties shall contract with and appoint a successor Monitor. If the Parties fail to appoint a successor Monitor within a timeframe that has been agreed upon, this Agreement shall be null and void.

3.2. The Monitor shall promptly visit Metron's Allegan, Big Rapids and Kalamazoo Facilities after this Agreement takes effect and thereafter approximately once every month, or at intervals the Monitor deems appropriate based on Metron's performance. The Monitor shall visit Metron's other Facilities at least once during the first six months this Agreement is in effect, and then at intervals the Monitor deems appropriate based on Metron's performance.

3.3. The Monitor, Metron, and the Attorney General shall meet at least semi-annually to discuss the status of Metron's compliance with this Agreement.

3.4. The Monitor must submit reports within 48 hours to the Attorney General and Metron if he or she has any concerns regarding the health or safety of the residents and such concerns create an obligation to report under federal or state law or professional licensing standards. This provision does not obviate Metron's need to report any such matters in the manner required by state or federal law.

3.5. The Monitor must provide written quarterly reports to the Attorney General and Metron concerning Metron's compliance with this Agreement in such form and manner as the Monitor deems appropriate.

3.6. The Monitor shall charge a usual and customary rate for his or her fees and expenses. Metron must pay the Monitor within 30 calendar days of submission of his or her invoices. Metron has the right to audit the Monitor's invoices and present to the Attorney General any challenges to the appropriateness of expenses incurred. If the Attorney General agrees with Metron, the Monitor has 30 calendar days to reimburse Metron.

3.7. In addition to the other rights set forth in this Agreement, the Monitor and, with the exception of 3.7(j), the Attorney General, have the right to:

- a. Immediate access to the Facilities, at any time and without prior notice, to assess compliance with this Agreement, to assess the effectiveness of the internal quality assurance mechanisms, and to ensure that the data being generated is accurate;
- b. Access and copy any information necessary to verify Metron's compliance or lack of compliance with this Agreement and any information deemed relevant by the Attorney General or the Monitor, including:
  - (1) Internal information;
  - (2) Utilization and review records, minutes, and reports;
  - (3) Peer review records, minutes, and reports;
  - (4) Quality assurance records, working papers, minutes, and reports;
  - (5) Records necessary to identify residents to determine the quality of their care;
  - (6) Resident roster;
  - (7) Information showing the number of residents:
    - (a) At risk for or dehydration and or nutritional problems;
    - (b) Transferred, discharged, being treated for or receiving emergency care for nutritional, hydration, or pressure sores; and;
    - (c) Admitted with or at risk for dehydration, pressure sores, and nutritional problems.
- c. Access to credentialing, privileging, competency testing, and peer review information. The Monitor shall review and evaluate the operation of the Metron's peer review, quality assurance, credentialing, and competency programs. The Monitor shall, after review and evaluation of the information obtained, make such recommendations as deemed necessary by the Monitor.
- d. Immediate access to and copies of any information, including all electronic data or record storage, requested by the Attorney General or the Monitor without issuance of subpoenas or other compulsory process. However, the Attorney General reserves the right to seek compulsory production of information by any means allowed by state or federal law.
- e. If the information deemed necessary to the Attorney General's or the Monitor's investigation, inspection, monitoring, enforcement, or resolution of issues related to this Agreement are not in the possession, custody, or control of Metron, it will identify the location of such information not in



its possession or control and the individual or entity in control of the information, and will assist the Attorney General or the Monitor in immediately obtaining such information. Such assistance includes, but is not limited to, the execution of any waiver, release, or authorization necessary for the Attorney General or the Monitor to obtain the information.

- f. Technical assistance from Metron, as the Attorney General or the Monitor may request, including, but not limited to, explanation of information, procedures, and computer analysis. Metron will provide any computer software and hardware it owns or has access to that is necessary to find, view, analyze, or interpret any information requested or provided pursuant to this Agreement.
- g. Upon request, receive reasonable advance notice of and attend unannounced:
  - (1) Training, in-services, or continuing education offered by Metron;
  - (2) Peer Review Committee meetings;
  - (3) Performance Review meetings;
  - (4) Quality Assurance meetings;
  - (5) Risk Management meetings;
  - (6) Skin Committee meetings;
  - (7) Board and Staff meetings;
  - (8) Care Planning meetings;
  - (9) Wound Care treatment meetings; and
  - (10) Any other meeting the Monitor deems appropriate for the monitoring or enforcement of this Agreement.
- h. Verify staffing levels, availability of equipment, maintenance of Facilities and equipment, and competency of the staff and Physicians;
- i. Require Metron to:
  - (1) Create, amend, and implement the policies, procedures and practices necessary to fully comply with the terms and conditions of this Agreement; and
  - (2) Utilize and cooperate with monitors, consultants, trainers, and administrators approved by the Monitor.
- j. Determine in his or her sole discretion whether Metron has:
  - (1) Provided the quality of care required under this Agreement;
  - (2) Provided the appropriate level of staffing in accord with this Agreement;
  - (3) Materially breached this Agreement, and

- (4) Reported and disclosed any and all information and documents to the Attorney General.

The Monitor's and Attorney General's access to information and documents under this section shall not constitute a waiver of any privilege Metron or the Metron Facilities may have against the disclosure of information or documents to a person not a party to this Agreement.

3.8. The Attorney General or the Monitor may, at their option, conduct interviews of the employees, contractors, subcontractors, officers and directors of Metron relating to anything relevant to this Agreement. Corporate legal counsel may be present for any interviews of corporate officers, directors and the administrators of Metron facilities.

3.9. Metron will, if the Attorney General or the Monitor requests, provide appropriate office space for the Attorney General's or the Monitor's interviews. The Attorney General or the Monitor may choose to conduct the interviews at a location other than the Metron facilities.

3.10. Metron shall allow their employees, officers, and directors to attend the interviews with a travel allowance covering meals and mileage and pay for the time spent in the interview at their normal hourly rate regardless of where or when the interview is conducted. The Attorney General and the Monitor will make reasonable efforts to conduct such interviews in a manner that does not unnecessarily interfere with the provision of care to the residents of Metron.

The Attorney General or any other state or federal agency may, in their sole discretion, take any action permitted by law regarding the acts or omissions that gave rise to a reportable event.

#### IV. Failure to Comply With Terms of Agreement

4.1. A material breach of the terms and conditions of this Agreement means:

- a. The failure to substantially comply with any of the terms and conditions of this Agreement, as determined by the Monitor;
- b. Providing information under to this Agreement that is deliberately false or misleading or contains deliberately false or misleading information;
- c. The failure to maintain staffing levels as required by this Agreement; and
- d. Failure to cooperate with the Attorney General or the Monitor, as required by this Agreement.

4.2. If the Monitor determines that Metron has materially breached the terms of this Agreement and failed to cure the breach within a reasonable time, as determined by the Monitor, the Attorney General may, in his sole discretion: (a) exercise any rights under this Agreement and exercise any other right granted by law, including seeking exclusion of Metron or any of its officers, directors, agents, and employees from the Medicaid Program, and all other state and federal health programs administered by the state where the law permits exclusion, or (b) extend the Agreement for a period of time equal to the length of any periods of noncompliance with this Agreement.

4.3. If the Attorney General decides to seek exclusion under paragraph 4.2 when permitted by law as one of the enforcement remedies, the Attorney General will notify Metron and any affected individual, in writing, of the alleged breach specifying the circumstances of the breach. Metron and any affected individual has 15 calendar days to respond to this notification and 30 days from the notification to demonstrate to the Attorney General that they are not in material breach or that the breach has been cured.

V. Liquidated Damages

5.1. The Parties agree that the nature and subject matter of this Agreement makes the determination of damages for a breach of this Agreement by Metron difficult. Thus, the Parties agree as follows.

5.2. If the Monitor finds that Metron has materially breached this Agreement, whether the breach is discovered by the Monitor or Metron, and that the breach was not cured within a reasonable time, then for each material breach, Metron must pay the State of Michigan liquidated damages of two thousand five hundred dollars (\$2,500.00) for each day of the period of noncompliance. The period of noncompliance is the day the material breach should have been discovered by Metron through and including the day the material breach is cured, less the number of days the Monitor determines reasonable to cure the noncompliance.

5.3. If the Monitor determines there has been a material breach of this Agreement, the Monitor shall promptly notify the parties in writing of the material breach, specify with particularity the nature of the breach, state the date the breach was or should have been discovered, whether the breach has been cured, and whether it was reported in compliance with paragraph 3.11. If the breach has been cured by the date it is discovered, the Monitor shall specify the period of noncompliance, if any. If the material breach has not been cured by the date it is discovered, the Monitor shall specify the date the breach was or should have been discovered and a reasonable time that includes a specific date by which the breach should have been cured or must be cured prospectively to avoid the imposition of liquidated damages. If the Monitor determines that the material breach has not been cured by the prospective date established by the Monitor, the Monitor shall promptly notify the parties in writing of that fact,

and state what remains to be done to cure the material breach. Once specified, the Monitor may extend the time to cure a breach when failure to cure is the result of circumstances entirely beyond Metron's control and Metron has taken all other necessary and appropriate actions to cure the breach. The Monitor shall promptly notify the parties in writing of the date a material breach has been cured to the Monitor's satisfaction.

5.4. If the Monitor determines that there has been a failure to report a reportable event in compliance with this Agreement, Metron must pay the State of Michigan liquidated damages of one thousand five hundred dollars (\$1,500) for each failure. This sum is in addition to any other liquidated damages the Monitor may determine to be applicable.

5.5. The Monitor's determination of whether a breach is material, when a material breach should have been discovered, the reasonable time to cure a material breach, and when a material breach is cured, whether an event was a reportable event, and whether a reportable event was reported in compliance with this Agreement, is final and binding on the Parties, unless the Parties subsequently agree to modify the Monitor's decision.

5.6. The payment of liquidated damages is a remedy only for a material breach of this Agreement and is not considered an administrative, civil or criminal penalty nor does it preclude specific enforcement of this Agreement, exclusion from the State's Medicaid Program, the filing of appropriate criminal charges, administrative, or civil proceedings for other remedies and damages.

5.7. All liquidated damages must be paid within 30 days of the date that they are imposed. Any liquidated damages not paid within 30 days shall be deducted from the Medicaid payments owed to Metron or any of its affiliates.

5.8. Liquidated damages imposed during the course of this Agreement may be collected at any time in the same manner as a judgment of a court of competent jurisdiction and Metron will not contest the amount due by any means whatsoever, including by administrative or judicial proceeding.

#### V. Sales and Acquisitions

6.1. Metron will not sell any of its Facilities without first providing the Attorney General with the name and address of the purchaser, who must be a bona fide purchaser unrelated to Metron, and obtaining the Attorney General's written acquiescence to the sale. Acquiescence will not be unreasonably withheld. Should Metron sell any of its Facilities this Agreement shall terminate with respect to the Facility sold when the sale is consummated and all regulatory approvals have been obtained. This Agreement shall not be extended on the ground that a sale approved by the Attorney General is pending, when the Agreement would otherwise terminate or expire by its own terms.

6.2. If Metron intends to acquire by any means additional nursing homes during the time this Agreement is in effect, Metron must first notify the Attorney General and obtain his written acquiescence before entering into a purchase agreement or contract. Notification of the Attorney General must be in writing and include the type of facility, the location, phone number, fax number, and provider identification number. Acquiescence will not be unreasonably withheld.

#### VI. Enforcement

7.1. The Parties have the right to seek specific performance of this Agreement in the Ingham County Circuit Court. Seeking specific performance shall not be a prerequisite to the

Attorney General bringing any civil or criminal action that is not precluded by this Agreement. The Parties shall not seek judicial review of decisions or actions that have been designated as being within the exclusive or sole discretion of the Monitor or a Party.

7.2. The right to seek specific performance includes, but is not limited to, the Attorney General's right to a) seek enforcement of the provisions of this Agreement which require Metron to cooperate with or provide information to the Attorney General or the Monitor, and b) seek enforcement of a proper directive of the Monitor. In such actions the burden of proof shall be on Metron to show their compliance with this Agreement.

#### VII. Dispute Resolution

8.1. All disputes under this Agreement involving questions of compliance with the terms of this Agreement are to be resolved by negotiation between the parties or if they cannot agree, by the Monitor.

8.2. In proceedings to enforce or interpret this Agreement the burden shall be on Metron to demonstrate that it has fully and faithfully implemented and complied with the terms and conditions of this Agreement.

#### VIII. Indemnification

9.1. Metron will indemnify and hold harmless the Attorney General, the State of Michigan, the Monitor, and their officers, directors, agents, employees, and successors and assigns from any and all claims, causes of action, and liability, which arises out of this Agreement. Metron will pay all reasonable and actual costs, expenses, judgments, settlements, and attorney fees incurred by the Attorney General, the State of Michigan, the Monitor, and their officers, directors, agents, employees, and successors and assigns in connection with any claim,

cause of action, or liability asserted against one or more of them, which arises out of or in connection with this Agreement. This paragraph will apply to any and all claims, causes of action, or liability asserted by, among others, any past, present or future residents of Metron, employees, staff, physicians, administrators, directors or persons who have privileges at Metron and any third party used by one or more of the Parties to fulfill its obligations under this Agreement.

9.2. The Attorney General and the Monitor shall provide Metron with timely written notice of any claims or complaints that may invoke this section of the Agreement.

IX. State Law Governing Agreement

10.1. This Agreement is governed by the laws of the State of Michigan.

X. Miscellaneous

11.1. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter and may only be amended in writing, signed by authorized representatives of the Attorney General and Metron. There are no oral or written collateral representations, agreements, or understandings except as provided in this Agreement.

11.2. The waiver or failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of any right or any future rights.

11.3. If any part of this Agreement is found or held invalid or unenforceable for any reason, by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall survive and be construed as if such invalid or unenforceable part had not been part of this Agreement.



11.4. This Agreement may not be assigned, in whole or in part, by either of the Parties without the prior written consent of the other party, and consent must not be unreasonably withheld.

11.5. The following provisions shall survive and remain in full force and effect after termination of this Agreement: Section II–B, paragraphs 2.18, 2.19, 2.22, 2.3 and 2.24; Section III, paragraphs 3.7(d), 3.7(e), 3.8, 3.9, and 3.10; Section V, paragraph 5.8, Section VII, but only to the extent that an action that was to be completed while this Agreement was in effect remains uncompleted after termination, and Sections IX, X, and XII.

11.6. This Agreement may be executed by counterpart signatures and copies of the Agreement shall have the same binding force and effect as an original.

#### XI. Notices

Any notice or other communication given under this Agreement shall be in writing, delivered by hand, or through the United States Postal Service, registered mail, to the following individual's attention:

For Metron:

Mark Piersma, President  
Metron Integrated Health Systems  
and all other Metron entities  
3075 Orchard Vista Dr., SE, Ste.100  
Grand Rapids, MI 49546

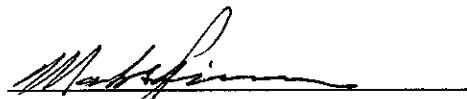
For the Attorney General:

Mark W. Matus (P36659)  
Jessica L. Frazier (P68231)  
Assistant Attorneys General  
Department of Attorney General  
Health Care Fraud Division  
P.O. Box 30218  
Lansing, MI 48909

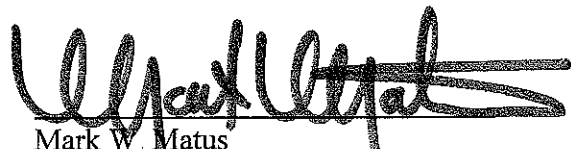
XII. Signatories

Metron and Michael A. Cox, Attorney General of the State of Michigan have caused this Agreement to be executed by their duly authorized representatives.

By:

  
Mark Piersma, Manager of Allegan  
Nursing Home, L.L.C. and Bethany  
Care Center, L.L.C., and President  
of all other Metron entities  
3075 Orchard Vista Dr., SE, Ste. 100  
Grand Rapids, MI 49546

By:

  
Mark W. Matus  
Assistant Attorney General  
Department of Attorney General  
Health Care Fraud Division  
P.O. Box 30218  
Lansing, MI 48909

Date:

May 17, 2006

Date:

May 19, 2006

CASES/06-02-1024/LGL/CIA FINAL 060516